

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Access Charge Reform)	
)	CC Docket No. 96-262
Southeast Telephone, Inc.)	
Petition for Waiver of Section)	
61.26(a)(6) of the Commission's)	
Rules)	

AT&T REPLY COMMENTS

Pursuant to the Commission's April 2, 2004 Public Notice (DA 04-936), AT&T Corp. ("AT&T") submits this reply to comments of other parties on the petition of Southeast Telephone, Inc. ("Southeast") for a waiver of Section 61.26(a)(6) of the Commission's rules, 47 C.F.R. § 61.26(a)(6).¹ Those comments further confirm AT&T's showing that (1) Southeast has failed to demonstrate any unique circumstances warranting a waiver, and (2) the requested relief is irreconcilable with the *CLEC Access Charge Order*'s grounds for adopting a "rural exemption" as part of the Commission's benchmark access rate regime for competitive local exchange carriers ("CLECs").² Accordingly, Southeast's waiver petition should be denied.

Under the rural exemption, the maximum access rate that a CLEC such as Southeast is permitted to charge under tariff is based on the National Exchange Carrier

¹ Comments were filed by BellSouth Telecommunications, Inc. ("BellSouth"), Kentucky ALLTEL, Inc. ("ALLTEL"), and The Rural Independent Competitive Alliance ("RICA").

² *Access Charge Reform*, 16 FCC Rcd 9923 (2001) ("*CLEC Access Charge Order*").

Association (“NECA”) tariff, rather than the substantially lower benchmark rate level otherwise prescribed by the Commission. *See* AT&T Comments, at 2 and n.3. As AT&T also pointed out in its Comments (at 4), the Commission in the *CLEC Access Charge Order* established a “bright line” standard under which the rural exemption is only available to a CLEC whose service area does not include any incorporated place of 50,000 or more inhabitants, or an urbanized area as defined by the Census Bureau. Under the requested waiver, however, Southeast would still be permitted to charge the rural exemption rate so long as 95 percent of its customers are within a service area that otherwise satisfies these prescribed criteria.

The proposed waiver is rife with potential for serious abuse. Under the standard that Southeast suggests, a CLEC could solicit a few customers in metropolitan areas that generate large volumes of traffic, for which the CLEC could then impose access charges that are double or more the rate that would be charged by an incumbent local exchange carrier (“ILEC”). AT&T, at 4. Indeed, BellSouth’s comments (at 2) confirm the opportunity for gaming that the waiver presents:

“Simply stating that 95 percent of their customers are in a rural area does not provide any indication of the amount of nonrural traffic Southeast terminates or originates. All that a carrier need do is have substantial nonrural traffic to serve a call center, a repair center, a service center or an ordering facility for a single business in a nonrural area. In such a scenario, all of the carrier’s customers except one could be rural, but the traffic volumes would reflect a substantially different mix.”

In like manner, ALLTEL (at 3) points out that Southeast’s proposed “95 percent of customers” standard would potentially allow that CLEC to immediately serve hundreds of customers in the adjacent urbanized Lexington and Louisville service areas, and to expand that number correspondingly as Southeast’s rural customer base expands.

Like AT&T and BellSouth, ALLTEL recognizes (*id.*) that “[d]epending on the types of customers served by [Southeast], even a few of those customers located in urban areas could generate significant traffic volumes.” Such an expansion of Southeast’s traffic would impose substantial, unforeseen additional costs on access customers who originate or terminate traffic to or from those urban customers³. There is no justification for the Commission to open the floodgates to this type of exploitation that granting the waiver would incent.

Like Southeast (*Pet.*, at 4), RICA also asserts (at 2) that the Commission’s bright line test is based principally on “administrative simplicity” and claims erroneously that the waiver would not interfere significantly with that objective. As BellSouth (at 2-3) and ALLTEL (at 4-5) correctly point out, however, the standard that Southeast and RICA support would create an administrative morass requiring ongoing reporting by CLECs, and continuous oversight by the Commission and affected access customers, to determine whether a CLEC has qualified for the “95 percent of customers” criterion, and whether it remains in compliance at any given time. And such reporting would be indispensable; because neither the agency nor access customers can determine extrinsically whether a CLEC’s customer base falls within the threshold proposed in the petition.

Even if Southeast’s petition were not otherwise antithetical to the Commission’s objectives in the *CLEC Access Charge Order* – and, as shown above, the

³ As ALLTEL also points out (*id.*), Southeast could mitigate this impact on access customers by committing to use resold ILEC exchange service for the few stray urban customers it purportedly seeks to accommodate. Significantly, however, Southeast’s petition does not offer any such commitment.

two are irreconcilable – the comments also abundantly support AT&T’s showing (at 3) that the waiver request must be rejected because it fails to show any unique circumstances warranting grant of such relief. RICA, which alone has some 80 member CLECs nationwide, states (at 2) that its members “similarly face the quandary of how to address requests for service made by potential subscribers in non-rural areas” BellSouth is therefore well justified in warning (at 3) that granting Southeast’s petition here will predictably lead to “a flood of similar requests” that eventually “would effectively eliminate the rule.”

WHEREFORE, for the reasons stated above and in AT&T’s Comments, Southeast’s petition for waiver of Section 61.26(a)(6) of the Commission’s rules should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tracy Lea Rudnicki, do hereby certify that on this 3rd day of May 2004, a copy of the foregoing "AT&T Reply Comments" was served by U.S. first class mail, postage prepaid, on the parties listed below.

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